

These are the minutes of the regular meeting of the Texas Transportation Commission, which was held on October 25, 2007 in Eagle Pass, Texas. The meeting opened at 9:08 a.m. with the following commissioners present:

Texas Transportation Commission:

Ric Williamson	Chair
Hope Andrade	Commissioner
Ted Houghton, Jr.	Commissioner
Ned Holmes	Commissioner
Fred Underwood	Commissioner

Administrative Staff:

Amadeo Saenz, Jr., Executive Director
Bob Jackson, General Counsel
Roger Polson, Executive Assistant to the Deputy Executive Director

Registration sheets listing others in attendance are on file with the Texas Department of Transportation Chief Minute Clerk.

A public notice of this meeting containing all items on the proposed agenda was filed in the Office of the Secretary of State at 3:33 p.m. on October 17, 2007, as required by Chapter 551, of the Government Code, referred to as "The Open Meetings Act."

Receive comments from area public officials, community and civic leaders, and private citizens. Report by the Laredo District.

The commission received comments from Laredo District Engineer Mario Medina; Eagle Pass Mayor Chad Foster; Maverick County Judge Pepe Aranda; and Representative Tracy King and Judith Canales, Executive Director of Maverick County Economic Development Corporation.

ITEM 1. Approval of Minutes of the September 27, 2007 regular and special meetings and the minutes from the October 16, 2007 special meeting held in College Station, Texas.

Commissioner Underwood made a motion, seconded by Commissioner Houghton, and the commission approved the minutes of the September 27, 2007 regular and special meetings and the minutes from the October 16, 2007 special meeting held in College Station, Texas.

ITEM 2. TOLL PROJECTS

a. **Tarrant County** – Authorize issuance of a Request for Proposals, to include a stipulated amount for payment of work product to unsuccessful proposers, for the development of SH 114 from SH 114L Business to east of International Parkway and SH 121 from FM 2499 to SH 360 (the SH 114/SH 121 corridor), including tolled managed lanes along SH 114 from east of FM 1709 to east of International Parkway in Tarrant County and other facilities to the extent necessary for connectivity, mobility, safety, and financing (MO)

Commissioner Holmes made a motion, seconded by Commissioner Houghton and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

111102
TTA

Transportation Code, Chapter 223, Subchapter E, prescribes the process by which the Texas Department of Transportation (department) may enter into a comprehensive development agreement (CDA) with a private entity that provides for the design, development, construction, financing, maintenance, repair, operation, extension or expansion of a toll project on the state highway system.

On March 30, 2006, by Minute Order 110469, the Texas Transportation Commission (commission) authorized and directed the department to issue a request for qualifications (RFQ) to develop, design, and construct and to potentially finance, maintain, and operate SH 114 from SH 114L Business to east of International Parkway and SH 121 from FM 2499 to SH 360 (the SH 114/SH 121 corridor), including tolled managed lanes along SH 114 from east of FM 1709 to east of International Parkway, as well as other facilities to the extent necessary for connectivity, mobility, safety, and financing (formerly known locally as the Funnel but now known as the DFW Connector Project).

On December 29, 2006 the department issued a RFQ for the DFW Connector Project. The department determined that three of the proposing teams submitting qualification submittals in response to the RFQ were qualified to be on the short list of teams that will be requested to submit detailed proposals.

Transportation Code, §223.203(m) allows the department to pay an unsuccessful private entity that submits a responsive proposal in response to a request for proposals (RFP) a stipulated amount in exchange for the work product contained in that proposal. The stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions.

In the RFP, the department will request detailed engineering, design, financial, and other information from the short listed proposers that is anticipated to be of value to the department and able to be used by the department in the performance of its functions. Payment for this work product would allow the department to use the work product for the benefit of the DFW Connector Project or for other department projects without further payment to the applicable proposers. Payment for the work product of proposers

will defray a portion of the costs to be incurred by the short listed proposers in preparing a proposal, and is thereby anticipated to increase the quality of detailed proposals submitted for the DFW Connector Project and to increase competition for the project.

IT IS THEREFORE ORDERED by the commission that the department is authorized and directed to issue an RFP to develop, design, and construct and to potentially finance, maintain, and operate the DFW Connector Project from SH 114L Business to east of International Parkway and SH 121 from FM 2499 to SH 360 (SH 114/SH 121 corridor), including tolled managed lanes along SH 114 from east of FM 1709 to east of International Parkway, as well as other facilities to the extent necessary for connectivity, mobility, safety and financing.

IT IS FURTHER ORDERED that the department is authorized to pay to each proposer that submits a responsive, but unsuccessful detailed proposal to develop, design, construct, and to potentially finance, maintain, and operate the DFW Connector Project an amount based upon the value of the work product provided in the proposal that can, as determined by the executive director of the department or his designee, be used by the department in the performance of its functions, up to a maximum amount per proposer of \$500,000.

IT IS FURTHER ORDERED that compensation may only be paid if the work product submitted also meets the minimum criteria and other conditions for payment identified by the department in the DFW Connector Project procurement documents.

b. Travis and Williamson Counties – Accept the General Engineering Consultant quarterly progress report for the Central Texas Turnpike System as of August 31, 2007 (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Texas Turnpike Authority Division Director Phillip Russell:

111103
TTA

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY 130 has been designated a toll project and a controlled access state highway from I-35 north of Georgetown to a southern terminus at US 183.

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY 45N has been designated a toll project and a controlled access state highway from west of US 183 to SH 130.

In TRAVIS and WILLIAMSON COUNTIES, STATE HIGHWAY LOOP 1 has been designated a toll project and a controlled access state highway from the intersection of existing Loop 1 and FM 734 (Parmer Lane) in Austin to the intersection of Loop 1 and SH 45N.

The Texas Transportation Commission (commission) has issued toll revenue bonds and other obligations to finance a portion of the costs of the 2002 Project of the Central Texas Turnpike System, a toll project composed of the SH 130, SH 45N, and

Loop 1 project elements, and has entered into an Indenture of Trust dated July 15, 2002 with Bank One, National Association, as Trustee to secure the revenue bonds and other obligations issued for the 2002 Project.

In Section 406 of the Indenture of Trust, the commission covenants that at least quarterly during the construction of the 2002 Project it will cause the general engineering consultant to prepare a progress report in connection with such construction, including current projections with respect to the date the 2002 Project will be open to traffic, the date on which construction will be completed, the cost of the 2002 Project, and the amount of funds required each six months during the remaining estimated period of construction to pay the costs of the 2002 Project.

Section 406 of the Indenture of Trust requires copies of the quarterly progress report to be filed with the commission, the U.S. Department of Transportation, and the Trustee, and to be made available by the Trustee to owners of obligations issued for the 2002 Project.

The commission has previously engaged PBS&J to serve as general engineering consultant in accordance with the Indenture of Trust. A quarterly progress report for the period ending August 2007, attached as Exhibit A, has been prepared by PBS&J in accordance with Section 406 of the Indenture of Trust.

IT IS THEREFORE ORDERED by the commission that the general engineering consultant's quarterly progress report attached as Exhibit A is accepted.

Note: Exhibit A on file with minute order clerk.

ITEM 3. FINANCE

a. Accept the Quarterly Investment Report as of August 31, 2007 as required by the Public Funds Investment Act (MO)

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111104
FIN

Government Code, Chapter 2256 (Public Funds Investment Act) authorizes the Texas Transportation Commission (commission) to purchase, sell, and invest its funds and funds under its control in investments authorized under the Public Funds Investment Act, in accordance with investment policies approved by the commission.

Government Code, §2256.005 requires the commission to adopt a written investment policy regarding the investment of its funds and funds under its control, including a separate written investment strategy for each of the funds or group of funds under its control, and to designate one or more officers or employees of the Texas Department of Transportation (department) as investment officer to be responsible for the investment of funds consistent with the investment policy.

Government Code, §2256.023 requires the designated investment officer to prepare and submit to the commission and the executive director, not less than quarterly, a written report of investment transactions for all funds covered by the Public Funds

Investment Act for the preceding reporting period. The report must describe in detail the investment position of the department on the date of the report, and must be prepared jointly and signed by each investment officer.

Pursuant to this legislation, in Minute Order 108970, dated July 25, 2002, the commission approved and adopted a written investment policy and written investment strategy applicable to funds of the commission held under the Indenture of Trust dated July 15, 2002 securing the outstanding bonds, notes or other obligations issued by the commission to finance a portion of the cost of the initial phase of the Central Texas Turnpike System, also known as the 2002 Project. The investment policy and investment strategy have been amended pursuant to Minute Order 109066, dated October 31, 2002, Minute Order 109339, dated July 31, 2003, Minute Order 109462, dated October 30, 2003, Minute Order 109732, dated July 29, 2004, Minute Order 109963, dated February 24, 2005, Minute Order 110087, dated May 26, 2005, Minute Order 110145, dated July 28, 2005, Minute Order 110617, dated July 27, 2006, and Minute Order 111003, dated July 26, 2007. The commission also adopted investment strategies in relation to the Texas Mobility Fund on February 24, 2005 and the Lease With an Option to Purchase Houston District Headquarters Complex Project on May 26, 2005. The commission has designated the department's Chief Financial Officer and Deputy Director of Finance as investment officers. The Debt Management Director is authorized to act as investment officer in the absence of the Chief Financial Officer and the Deputy Director of Finance.

Section 9.0 of the investment policy requires the investment officer to prepare and submit to each member of the commission and the executive director of the department an investment report on no less than a quarterly basis. The report must be prepared in accordance with the requirements of that section, including containing sufficient information to provide for a comprehensive review of investment activity and current investment instruments and performance for the reporting period.

Quarterly investment reports will be prepared for each quarter of the department's fiscal year. A quarterly investment report for the 2002 Project for the period ending August 31, 2007, attached as Exhibit A, and a quarterly investment report for the Lease With an Option to Purchase Houston District Headquarters Complex Project for the period ending August 31, 2007, attached as Exhibit B, have been prepared in accordance with Government Code, §2256.023 and Section 9.0 of the investment policy.

IT IS THEREFORE ORDERED by the commission that the quarterly investment reports attached as Exhibits A and B are accepted.

Note: Exhibits A and B on file with minute order clerk.

b. Report on the provisions related to training requirements of the Public Funds Investment Act

This report was presented by Chief Financial Officer James Bass.

ITEM 4. STATE INFRASTRUCTURE BANK

a. Collin County – Culleoka Water Supply Corporation – Consider granting preliminary approval of an application from the Culleoka Water Supply Corporation to borrow \$1.9 million from the State Infrastructure Bank to pay for waterline relocation along FM 982 in Collin County (MO)

Commissioner Houghton made a motion, seconded by Commissioner Andrade and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111105
OGC

The Culleoka Water Supply Corporation (corporation) submitted an application for financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the corporation of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The corporation intends to use the financial assistance to pay for waterline relocation costs along FM 982 resulting from the expansion of FM 982 in Collin County (project).

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the project.

Based on department review and analysis of the application, the Texas Transportation Commission (commission) makes the following findings: 1) the corporation has offered its utility revenues as security to assure likely repayment of the financial assistance; 2) the project is consistent with the Statewide Transportation Plan; 3) the project is listed in the 2006-2008 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS DETERMINED that the application for SIB financial assistance submitted by the Culleoka Water Supply Corporation meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$1,879,418 from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

b. El Paso County – City of El Paso – Consider rescinding MO 110854 and granting preliminary approval of an application from the City of El Paso to borrow \$6.1 million from the State Infrastructure Bank to pay for rehabilitation of the Stanton International Bridge in the City of El Paso (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order presented by Chief Financial Officer James Bass:

111106
FIN

The City of El Paso (city) submitted an application for \$12,463,000 in financial assistance from the State Infrastructure Bank (SIB) under Title 43 Texas Administrative Code, Chapter 6 (rules). The application satisfied all requirements of the rules, including passage by the city of a resolution authorizing submission of the application to the Texas Department of Transportation (department). The city intended to use the financial assistance to pay for improvements to three international bridges in El Paso (project).

Pursuant to Minute Order 110854 dated February 28, 2007, the Texas Transportation Commission (commission) preliminarily approved the request. The city subsequently submitted a revised application reducing the request to \$6,107,000 in financial assistance from the SIB. The city also revised the scope of the project to include only one of the three international bridges, the Stanton Bridge, referenced in the original application. Therefore, the city intends to use the reduced financial assistance to pay for improvements to the Stanton Bridge in El Paso (revised project).

The intended use of the financial assistance conforms to the purposes of the SIB. The present and projected financial condition of the SIB is sufficient to cover the requested financial assistance for the revised project.

Based on department review and analysis of the revised application, the commission makes the following findings: 1) the city has offered its bridge toll revenues as security to assure likely repayment of the financial assistance; 2) the revised project is consistent with the Statewide Transportation Plan; 3) the revised project is listed in the 2002-2004 Statewide Transportation Improvement Program and is consistent with the State Implementation Plan; 4) the revised project will improve both the safety and efficiency of state transportation systems; and 5) the repayment of the financial assistance under negotiated terms will expand the availability of funding for other transportation projects and reduce direct state costs.

NOW, THEREFORE, IT IS ORDERED that the original Minute Order 110854 dated February 28, 2007, authorizing the original request for financial assistance is rescinded.

IT IS FURTHER DETERMINED that the revised application for SIB financial assistance submitted by the City of El Paso meets the requirements of commission rules, and in accordance with those rules and applicable law, the commission grants preliminary approval of the application to borrow \$6,107,00 from the State Infrastructure Bank, and directs the executive director to commence negotiations and other actions authorized and required by its rules.

c. Hidalgo County – **Mission Redevelopment Authority** – Consider granting final approval of an application from the Mission Redevelopment Authority to borrow \$3 million from the State Infrastructure Bank to pay for construction related to the extension of FM 396/Anzalduas Road from the international border to US 83 in Hidalgo County (MO)

This item was deferred.

ITEM 5. URBAN THOROUGHFARE DESIGN TEAM

Create an informal Urban Thoroughfare Team with members appointed by staff to advise the department administration on incorporation of an urban thoroughfare approach into department manuals and programs as appropriate (MO)

Commissioner Houghton made a motion, seconded by Commissioner Underwood and the commission approved the following minute order presented by Deputy Executive Director Steve Simmons:

111107
DES

Urban thoroughfares work as an overall enhancement to the community providing a unique opportunity for local jurisdictions to create aesthetically pleasing transportation facilities for all transportation modes. Flexibility in project development and design is necessary to balance safety, mobility, economic development, and environmental issues for new and redesigned urban transportation facilities. This flexibility in project planning and the inclusion of stakeholders early in the process has also been referred to as smart growth, context sensitive solutions, and the new urbanism.

The Texas Transportation Commission (commission) desires to promote flexibility in design for urban thoroughfares and include the urban design and planning community by incorporating this approach at the appropriate stage of project development to:

- Satisfy the purpose and needs of the community as a whole;
- Provide enhanced safety for both the transportation users and the surrounding community;
- Meet the needs of various modes of travel, including pedestrians, bicyclists, public transportation and vehicular traffic;
- Add lasting value and excellence to the transportation facility; and,
- Preserve scenic, historic, aesthetic and environmental resources.

To accomplish this urban thoroughfare initiative, the commission directs the Texas Department of Transportation (department) staff to appoint the following members to serve on an informal urban thoroughfare team to assist department administration with the incorporation of this approach into department manuals and programs as appropriate.

- Scott Polikov, Gateway Planning Group
- John Norquist, Congress for the New Urbanism
- Eric Dumbaugh, Texas A&M University
- Mike Sims, North Central Texas Council of Governments
- Doug Mann, HNTB, Inc.
- Hazel Borys, PlaceMakers
- David Bartz, Federal Highway Administration, Austin
- David Casteel, TxDOT San Antonio District
- Brian Barth, TxDOT Dallas District
- Carlos Lopez, TxDOT Traffic Operations Division
- Mark A. Marek, TxDOT Design Division

IT IS THEREFORE ORDERED by the commission that the individuals identified above are requested to participate on the urban thoroughfare team until such time as enhanced urban thoroughfare planning and design components can be communicated to appropriate department division and district staff.

ITEM 6. CONTRACTS

a. Award or Reject Highway Improvement Contracts

(1) Highway Maintenance and Department Building Construction (see attached itemized list) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order as recommended by staff and presented by Deputy Executive Director Steve Simmons:

111108
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for maintenance of the State Highway System, which were publicly opened and read on October 9 and 10, 2007.

Pursuant to cited code provisions highway maintenance contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the Texas Transportation Commission (commission) respectively award to the lowest bidder or reject, as indicated, those highway maintenance and department building construction contracts, with an engineer's estimated cost of \$300,000 or more, identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

(2) Highway and Transportation Enhancement Building Construction (see attached itemized list) (MO)

Commissioner Houghton made a motion, seconded by Commissioner Holmes and the commission approved the following minute order rejecting Project No. CPM 904-00-127 in Potter County, as recommended by staff and presented by Deputy Executive Director Steve Simmons:

111109
CST

Pursuant to Transportation Code, Chapter 223, Subchapter A, and Title 43, Texas Administrative Code, Chapter 9, Subchapter B, the Texas Department of Transportation (department) solicited and received sealed competitive bid proposals for improvement of the State Highway System, which were publicly opened and read on October 9 and 10, 2007.

Pursuant to cited code provisions highway improvement contract bids on a project may be accepted or rejected, but if accepted must be awarded to the lowest bidder.

An award is conditional in the event it is subject to Federal Highway Administration concurrence, third party funding or concurrence, and other conditions listed in the contract.

The department recommends that the commission respectively award to the lowest bidder or reject, as indicated, those highway and transportation enhancement building construction contracts identified on attached Exhibit A to this order.

IT IS THEREFORE ORDERED by the commission that the contracts described in Exhibit A be and are hereby respectively awarded to the lowest bidder or rejected as indicated therein.

If a contractual requirement of award is not satisfied within the prescribed time limit, including any extension of time allowed by the executive director or the director's designee, by reason of the action or inaction of the successful low bidder on any contract, including, but not limited to, disadvantaged business/historically underutilized business participation, the contract is automatically in default and the executive director is authorized and directed to retain and deposit the related contract proposal guaranty to the credit of the State Highway Fund and to readvertise that project for competitive bids at the earliest practical subsequent date.

If a condition of award is not satisfied, including, but not limited to, reason of nonconcurrence of the Federal Highway Administration, the failure of a third party to fund or concur, or failure to meet other conditions in the contract, the respective award is voided and the department will return the bid guaranty.

Note: Exhibit A on file with minute order clerk.

ITEM 7. ROUTINE MINUTE ORDERS

Commissioner Houghton made a motion, seconded by Commissioner Holmes, and the commission approved the following minute orders presented by Executive Director Amadeo Saenz, Jr.

a. Donations to the Department

(1) Administration – Consider a donation from the Canadian Council for Public-Private Partnerships (CCPPP) for a department employee's travel expenses to speak and participate in the 2007 CCPPP National Conference. The meeting will be held in Toronto, Ontario November 26 – 27, 2007 (MO)

111110
OGC

This minute order considers a donation of \$857.11 from the Canadian Council for Public-Private Partnerships (CCPPP) for travel expenses related to a Texas Department of Transportation (department) employee to participate and speak at the 2007 CCPPP National Conference to be held in Toronto, Ontario from November 26-27, 2007.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$857.11 by CCPPP is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(2) Bridge Division – Acknowledge a donation from Precast/Prestressed Concrete Institute (PCI) for a department employee's travel expenses to attend the PCI Committee Days held in Phoenix, Arizona October 21-24, 2007 (MO)

111111
OGC

This minute order acknowledges a donation of \$961.35 from Precast/Prestressed Concrete Institute (PCI) for a Texas Department of Transportation (department) employee's travel expenses to attend the PCI Committee Days that was held in Phoenix, Arizona on October 21-24, 2007.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$961.35 by PCI is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(3) **El Paso County** – Acknowledge a donation from the Rio Grande Chapter of the Appraisal Institute for a department employee's travel expenses to participate in the Cool Tools: New Technology for Real Estate Appraisers Conference held in Santa Fe, New Mexico October 18, 2007 (MO)

111112
OGC

This minute order acknowledges a donation of \$650 from the Rio Grande Chapter of the Appraisal Institute for travel expenses for a Texas Department of Transportation (department) employee to participate at the Cool Tools: New Technology for Real Estate Appraisers Conference that was held in Santa Fe, New Mexico on October 18, 2007.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$650 by the Rio Grande Chapter of the Appraisal Institute is acknowledged. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

(4) Walker County – Consider a donation from Walker County Proud Communities for wildflower seeds to be planted on the right of way (MO)

111113
OGC

This minute order considers a donation to the Texas Department of Transportation (department) from Walker County Proud Communities (WCPC) for wildflower seeds. The wildflower seeds, with an approximate value of \$1,000, will be planted on county rights of way.

The department has determined that acceptance of the donation is in the best interest and welfare of the traveling public and will provide a significant public benefit.

Transportation Code, §201.206, authorizes the department to accept a donation in any form, including realty, personalty, money, materials, and services, for the purpose of carrying out its functions and duties. Government Code, Chapter 575, requires the

governing board of a state agency to acknowledge the acceptance of a donation valued at \$500 or more by majority vote at an open meeting, not later than the 60th day after the date the donation is accepted. It also prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

The Texas Transportation Commission (commission) has adopted 43 TAC §§1.500-1.506, which relate to the department's acceptance of donations. Section 1.503 prohibits acceptance of a gift or donation when the donor is subject to department regulation or oversight or when the donor is interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department, except as provided by that section. It also provides that the commission may approve the acceptance of a donation, notwithstanding the foregoing proscriptions in the rules, if it determines that acceptance would provide a significant public benefit and would not influence or reasonably appear to influence the department in the performance of its duties.

The commission finds that the donation will further the department's responsibilities and that the donor is not a party to a contested case before the department and has not been a party to a contested case before the department during the last 30 days.

The commission also finds that the donor is not subject to department regulation or oversight, and that this donation will not influence or reasonably appear to influence the department in the performance of its duties.

IT IS THEREFORE ORDERED by the commission that the donation of \$1,000 by WCPC is accepted. The executive director or the executive director's designee is authorized to execute all necessary documents under 43 TAC §1.504 to effect the acknowledgement of the donation.

b. Eminent Domain Proceedings

Various Counties – noncontrolled and controlled access highways (see attached itemized list) (MO)

111114
ROW

The Texas Transportation Commission (commission) of the State of Texas (state) has found in order to promote the public safety, to facilitate the safety and movement of traffic and to preserve the financial investment of the public in its highways, public necessity requires the laying out, opening, constructing, reconstructing, maintaining, and operating of the following highways in the state as a part of the State Highway System (highway system).

The commission has found and determined that each of the following listed parcels of land, same being more particularly described in the exhibits attached hereto, and such additional lesser estates or property interests described thereon, are necessary or convenient for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by Texas Transportation Code, Subchapter D, Chapter 203, Sections 203.051, 203.052, and 203.054, as a part of the highway system to be constructed, reconstructed, maintained and operated thereon.

The commission has found in order to promote the public safety, to facilitate the safety and movement of traffic, to preserve the financial investment of the public in its highways and reconstructing, maintaining, and operating of Controlled Access Highways in the state as a part of the highway system at such locations as are necessary throughout the state and has determined that each of the following listed parcels of land, described in those Exhibits designated, identified and listed by an alphabetical exhibit reference under "CONTROLLED ACCESS" and same being more particularly described in the exhibits attached hereto and such additional lesser estates or property interests described thereon, are necessary and suitable for use for such purposes and it is necessary to acquire fee simple title to said land, as provided by law, as a part of the highway system to be so constructed, reconstructed, maintained, and operated thereon and in the exercise of the police power of the state for the preservation of human life and safety, and under existing laws, the highway to be constructed on each such parcel of land is designated as a Controlled Access Highway, and on such parcels of land listed herein where there is remaining abutting private property, roads are to be built as a part of said highway whereby the right of ingress and egress to or from the remaining private property abutting on said highway is to be permitted and/or denied, as designated and set forth on each of the exhibits attached hereto.

The commission, through its duly authorized representatives, has attempted to negotiate with the owner(s) of the parcels of land described in the attached exhibits and has been unable to agree with such owner(s) as to the fair cash market value thereof and damages, if any, or after diligent search of available records, numerous inquiries, and actual visits to the location of said parcels of land has been unable to locate the owner(s) of same so as to enter into negotiations for the purchase of said parcels of land.

IT IS THEREFORE ORDERED that the executive director is hereby authorized and directed to transmit this request of the commission to the attorney general to file or cause to be filed against all owners, lienholders and any owners of any other interests in said parcels of land, proceedings in eminent domain to acquire in the name of and on behalf of the state, for said purposes, fee simple title to each such parcel of land as are more particularly described in each of the exhibits attached hereto and made a part hereof, and such additional lesser estates or property interests as are more fully described in each of said exhibits, save and excepting, oil, gas and sulphur, as provided by law, to wit:

NON-CONTROLLED ACCESS

<u>COUNTY</u>	<u>HIGHWAY</u>	<u>EXHIBIT</u>	<u>ROW CSJ NO.</u>	<u>PARCEL</u>
Austin	SH 36	5	0187-03-059	34
Comal	FM 3009	6	3107-01-036	7
Hill	SH 31	2	0162-02-035	14
Hopkins	SH 11	13	0083-03-046	13, 13E
Hopkins	SH 11	14	0083-03-046	23, 23E
Tarrant	SH 26	12	0363-01-126	27
Tarrant	SH 26	11	0363-01-126	51

NON-CONTROLLED ACCESS (continued)

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Tarrant	SH 26	4	0363-01-123	9
Tarrant	SH 26	8	0363-01-123	3
Tarrant	SH 26	3	0363-01-123	4
Tarrant	SH 26	10	0363-01-126	86
Tarrant	SH 26	1	0363-01-127	11
Tyler	US 69	9	0200-05-039	43
Upshur	SH 155	7	0520-02-045	7

CONTROLLED ACCESS

COUNTY	HIGHWAY	EXHIBIT	ROW CSJ NO.	PARCEL
Angelina	US 69	L	0200-02-035	34
Angelina	US 69	P	0200-02-035	12
Angelina	US 69	Q	0200-02-035	21
Angelina	US 69	R	0200-02-035	77
Angelina	US 69	V	0200-02-035	70
Angelina	US 69	W	0200-02-035	71
Dallas	IH 635	D	2374-01-148	1
Dallas	IH 635	C	2374-01-148	2
Harris	US 290	E	0050-06-076	1AAQ
Henderson	US 175	S	0198-02-028	124
McLennan	IH 35	X	0015-01-194	20
Montgomery	IH 45	A	0675-08-089	13
Montgomery	IH 45	B	0675-08-089	4
Montgomery	IH 45	H	0675-08-089	134
Montgomery	IH 45	J	0675-08-089	103
Montgomery	IH 45	U	0675-08-089	23
Montgomery	IH 45	G	0675-08-089	155
Montgomery	IH 45	K	0675-08-089	116
Montgomery	IH 45	I	0675-08-089	159
San Jacinto	US 59	T	0177-02-072	13
Tarrant	SH 360	M	2266-02-129	69
Tarrant	SH 360	N	2266-02-129	68
Tarrant	SH 360	O	2266-02-129	67
Williamson	IH 35	F	0015-08-126	2

c. Finance

Accept the quarterly cash report for the period ending August 31, 2007 (MO)

111115
FIN

Texas Transportation Code, §201.107 requires the Texas Transportation Commission (commission) to prepare a quarterly statement containing an itemized list of all the money received by the Texas Department of Transportation (department) and the

source of the money and of all money paid by the department and the purpose of the payment. The statement shall be filed in the records of the department and a copy submitted to the Governor. The report must comply with each reporting requirement applicable to financial reporting provided by the General Appropriations Act.

The cash statement will be prepared for each quarter of the department's fiscal year. A quarterly cash report for the department for Fiscal Year 2007, ending August 31, 2007, attached as Exhibit A, has been prepared in accordance with Texas Transportation Code, §201.107.

IT IS THEREFORE ORDERED by the commission that the quarterly cash report attached as Exhibit A is approved.

Note: Exhibit A on file with minute order clerk.

d. Highway Designation

El Paso County – Rescind Minute Order 103924, dated June 30, 1994, designating a new location of SH 178 (MO)

111116
TPP

In EL PASO COUNTY, the City of El Paso has requested that Minute Order 103924, dated June 30, 1994, be rescinded. This minute order extended the designation of State Highway 178 along a new location from the intersection of I-10 to the intersection of State Loop 375, a distance of approximately three miles.

Pursuant to Texas Transportation Code, §§201.103 and 221.001, the executive director has recommended that Minute Order 103924 be rescinded.

IT IS THEREFORE ORDERED by the Texas Transportation Commission that Minute Order 103924, dated June 30, 1994, is hereby rescinded.

e. Load Zones & Postings

Various Counties – Revise load restrictions on various bridges on the state highway system (MO)

111117
BRG

The Texas Transportation Commission (commission) under provision of V.T.C.A., Transportation Code, §621.102, may set the maximum gross weight of a vehicle and its load, maximum gross weight of a combination of vehicles and loads, maximum axle load, or maximum wheel load that may be moved over a state highway or a farm or ranch road if the commission finds that heavier maximum weight would rapidly deteriorate or destroy the road or a bridge along the road.

Pursuant to §621.102, a maximum weight or load may not exceed the maximum set by statute for that weight or load. This section does not apply to a vehicle delivering groceries, farm products, or liquefied petroleum gas.

An engineering and traffic investigation has been made to determine and fix the maximum loads that may be moved over the state highway system.

It has been determined from this investigation that the loads on certain bridges of the state highway system should be restricted or previous restrictions should be revised or removed.

IT IS THEREFORE ORDERED by the commission that the maximum load limits which may be moved over the bridges described in Exhibits A and B be placed, revised, or removed as set forth therein, superseding any portion of previous action in conflict. The executive director shall proceed with the erection of signs as appropriate, making the placement of these load limitations effective and operative.

Note: Exhibit A on file with minute order clerk.

f. Right of Way Dispositions and Donations

(1) Bell County – US 190 east of Nolanville, 0.57 mile west of FM 2410 – Consider the sale of surplus right of way (MO)

111118
ROW

In BELL COUNTY, on US 190, the State of Texas acquired certain land needed for state highway purposes by instrument recorded in Volume 1288, Page 457, Deed Records of Bell County, Texas.

A portion of the land (surplus land), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus land.

William A. Messer, III is an abutting landowner and has requested that the surplus land be sold to him for \$30,310.

The commission finds \$30,310 to be a fair and reasonable value for the state's rights, title and interest in the surplus land.

NOW, THEREFORE, the commission finds that the surplus land is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument conveying all of the state's rights, title and interest in the surplus land to William A. Messer, III for \$30,310; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, titles and interests, if any, in and to all of the oil, gas, sulphur and other minerals, of every kind and character, in, on, under and that may be produced from the surplus land.

Note: Exhibit A on file with minute order clerk.

(2) Brown County – US 67/84/377 at Early Parkway in Early – Consider the sale of a surplus easement (MO)

111119
ROW

In BROWN COUNTY, on US 67/84/377, the State of Texas (state) acquired certain land needed for highway purposes by instrument recorded in Volume 524, Page 528, Official Public Records of Brown County, Texas.

A portion of the land (surplus easement), described in Exhibit A, is no longer needed for a state highway purpose.

In accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the Texas Transportation Commission (commission) may recommend the sale of surplus easements to the underlying fee owner.

Steven Hager and wife, Jan Hager, are the fee owners underlying the surplus easement and have requested that the surplus easement be sold to them for \$14,211.

The commission finds \$14,211 to be a fair and reasonable value for the state's rights and interest in the surplus easement.

NOW, THEREFORE, in accordance with V.T.C.A., Transportation Code, Chapter 202, Subchapter B, the commission finds that the surplus easement is no longer needed for a state highway purpose and recommends, subject to approval by the attorney general, that the Governor of Texas execute a proper instrument releasing all of the state's rights and interest in the surplus easement to Steven Hager and wife, Jan Hager, for \$14,211; SAVE AND EXCEPT, however, there is excepted and reserved herefrom all of the state's rights, title and interests, if any, in and to all of the oil, gas, sulphur, and other minerals, of every kind and character, in, on, under and that may be produced from the land.

Note: Exhibit A on file with minute order clerk.

(3) **Martin County** – SH 349 Reliever Route from Midland County line to SH 349, six miles north of Loop 250 – Consider the donation of land for a highway improvement project (MO)

111120
ROW

In MARTIN COUNTY, on STATE HIGHWAY 349 RELIEVER ROUTE from Midland County line to SH 349, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Clarence Scharbauer, Jr. (owner) is the owner of the property described in Exhibit A. The owner wants to make a partial donation of this property to the department for construction of a highway improvement project. The land (including improvements) has an estimated value of \$450,772. This is a partial donation inasmuch as the owner is willing to donate the land and improvement value, but has requested to be compensated for the cost of reestablishing fences associated with the remainder tracts that will still be owned by the owner. Such re-fencing costs have been established to be \$89,918.

The owner is not subject to department regulations or oversight, or interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A partial donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the

donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A on file with minute order clerk.

(4) Midland County – SH 349, from SH 349/FM 1788, north of SH 191, to County Road 60 – Consider the donation of land for a highway improvement project (MO)

111121
ROW

In MIDLAND COUNTY, on STATE HIGHWAY 349 from SH 349/FM 1788, north of SH 191, to County Road 60, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Spanish Trail Land and Cattle Company Limited Partnership (owner) is the owner of the property described in Exhibit A. The owner wants to make a partial donation of this property to the department for construction of a highway improvement project. The land (including improvements) has an estimated value of \$115,710. This is a partial donation inasmuch as the owner is willing to donate the land and improvement value, but has requested to be compensated for the cost of reestablishing fences associated with the remainder tracts that will still be owned by the owner. Such re-fencing costs have been established to be \$24,594.

The owner is not subject to department regulations or oversight, or interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A partial donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A on file with minute order clerk.

(5) Midland County – SH 349 Reliever Route, from SH 158 to Martin County line – Consider the donation of land for a highway improvement project (MO)

111122
ROW

In MIDLAND COUNTY, on STATE HIGHWAY 349 RELIEVER ROUTE from SH 158 to Martin County line, the Texas Department of Transportation (department) is acquiring the right of way for a highway improvement project.

V.T.C.A., Transportation Code, §201.206, authorizes the department to accept donations of real property for the purpose of carrying out its functions and duties.

V.T.C.A., Government Code, Chapter 575, requires the Texas Transportation Commission (commission) to accept a gift or donation valued at \$500 or more by majority vote at an open meeting.

Clarence Scharbauer, Jr. (owner) is the owner of the property described in Exhibit A. The owner wants to make a partial donation of this property to the department for construction of a highway improvement project. The land (including improvements) has an estimated value of \$87,216. This is a partial donation inasmuch as the owner is willing to donate the land and improvement value, but has requested to be compensated for the cost of reestablishing fences associated with the remainder tracts that will still be owned by the owner. Such re-fencing costs have been established to be \$30,441.

The owner is not subject to department regulations or oversight, or interested in or likely to become interested in a contract, purchase, payment, or claim with or against the department.

A partial donation agreement has been executed by the owner and tendered to the department for acceptance under Title 43, Texas Administrative Code, §1.504.

IT IS THEREFORE ORDERED by the commission that (1) the commission has determined that acceptance of this donation would provide a significant public benefit, and would not influence or reasonably appear to influence the department in the performance of its duties, and (2) the executive director is hereby authorized to accept the donation of real property, as described in Exhibit A, and the executive director or the director's designee is authorized and directed to sign and execute a donation agreement with the owner, in accordance with Title 43, TAC, §1.504.

Note: Exhibit A on file with minute order clerk.

g. Speed Zones

Various Counties – Establish or alter regulatory and construction speed zones on various sections of highways in the state (MO)

111123
TRF

Transportation Code, §545.352 establishes prima facie reasonable and prudent speed limits for various categories of public roads, streets and highways.

Transportation Code, §545.353 empowers the Texas Transportation Commission (commission) to alter those prima facie limits on any part of the state highway system as determined from the results of an engineering and traffic investigation conducted according to the procedures adopted by the commission.

The Texas Department of Transportation (department) has conducted the prescribed engineering and traffic investigations to determine reasonable and safe prima facie maximum speed limits for those segments of the state highway system shown in Exhibits A and B.

Exhibit A lists construction speed zones in effect when signs are displayed within construction projects. The completion and/or acceptance of each project shall cancel the provision of this minute order applying to said project and any remaining construction speed zone signs shall be removed.

Exhibit B lists speed zones for sections of highways where engineering and traffic investigations justify the need to alter the speeds.

It has also been determined that the speed limit on one segment of the state highway system, previously established by the commission by minute order and listed in Exhibit C, is no longer necessary or has been incorporated by the city which has the authority to set the speed limit on this section of the highway.

IT IS THEREFORE ORDERED by the commission that the reasonable and safe prima facie maximum speed limits determined in accordance with the department's "Procedures for Establishing Speed Zones" and shown on the attached Exhibits A and B are declared as tabulated in those exhibits. The executive director is directed to implement this order for control and enforcement purposes by the erection of appropriate signs showing the prima facie maximum speed limits.

IT IS FURTHER ORDERED that a provision of any prior order by the commission which is in conflict with a provision of this order is superseded to the extent of that conflict, and that the portion of the minute order establishing the speed zones shown on the attached Exhibit C are canceled.

Note: Exhibits A through C on file with minute order clerk.

ITEM 8. Executive Session Pursuant to Government Code, Chapter 551

- a. **Section 551.071 - Consultation with and advice from legal counsel**
- b. **Section 551.072 - Discussion of real property purchase, exchange, lease, donations**
- c. **Section 551.074 - Discuss the evaluation, designation, reassignment, and duties of department personnel, including district engineers, division directors, and office directors.**

The commission did not meet in executive session.

OPEN COMMENT PERIOD

The commission did not receive any open comments.

The regular meeting of the Texas Transportation Commission adjourned at 11:34 p.m.

APPROVED:

Ric Williamson, Chair
Texas Transportation Commission

xxx

I hereby certify that the above and foregoing pages constitute the full, true and correct record of all proceedings and official records of the Texas Transportation Commission at its regular meeting on October 25, 2007, in Eagle Pass, Texas.

Dee Hernandez, Chief Minute Clerk
Texas Department of Transportation